

**LEASE**

**Between**

**HIGHLANDER TOWNGATE, LTD.,**  
a Texas limited partnership  
(Landlord)

**and**

**GOLDEN BEAR GOLF CENTERS, INC.**  
a Florida corporation  
(Tenant)

**Dated September 13, 1996**

**TABLE OF CONTENTS**

<b><u>Section</u></b>	<b><u>Page</u></b>
1. Demise; Use; Security Interest . . . . .	1
2. Term . . . . .	2
3. Option to Extend . . . . .	3
4. Termination Right . . . . .	4
5. Base Annual Rental . . . . .	4
6. Percentage Rental . . . . .	4
7. Additional Rent; Payments; Interest . . . . .	5
8. Condition of Premises, Improvements . . . . .	5
9. Hazardous Materials . . . . .	6
10.- Termination of License Agreement . . . . .	7
11. The Prime Lease . . . . .	7
12. Default by Tenant . . . . .	11
13. Nonwaiver . . . . .	13
14. Cumulative Rights and Remedies . . . . .	13
15. Waiver of Claims and Indemnity . . . . .	13
16. Waiver of Subrogation . . . . .	13
17. Brokerage Commissions . . . . .	14
18. Successors and Assigns . . . . .	14
19. Entire Agreement . . . . .	14
20. Notices . . . . .	14
21. Authority of Tenant . . . . .	15

23.	Consent of Prime Landlord . . . . .	15
24.	Examination . . . . .	16
27.	Exculpation . . . . .	16

## LEASE

THIS LEASE (this "Lease") is made and entered into as of the 13<sup>th</sup> day of September, by and between HIGHLANDER TOWNGATE, LTD., a Texas limited partnership ("Landlord") and GOLDEN BEAR GOLF CENTERS, INC., a Florida corporation \* ("Tenant");

**PREDECESSOR TO FACI**

### W I T N E S S E T H:

WHEREAS, by that certain Ground Lease dated as of April 1, 1994, as amended by that certain First Amendment to Ground Lease (the "First Amendment") of even date herewith, a copy of which is attached hereto as Exhibit A and by this reference made a part hereof (as so amended, collectively, the "Prime Lease"; all capitalized terms used herein shall have the same meaning ascribed thereto in the Prime Lease, except to the extent otherwise defined herein), Housing Resources Company, a Nevada limited liability company (together with its successors and assigns, the "Prime Landlord"), as successor in interest to RIR Associates, a California general partnership, leased to Landlord a portion of the Project known as the Moreno Valley Mixed Use Development-Towngate located in the City of Moreno Valley, County of Riverside, State of California, which Premises is described on Exhibit B to the Prime Lease for a term initially commencing on April 1, 1994 and ending on September 13, 2006 (subject to extension); and

WHEREAS, pursuant to the terms of the Prime Lease, Landlord has constructed certain Improvement on the Premises which are owned by Landlord;

WHEREAS, subject to the consent of Prime Landlord, (i) Tenant desires to sublease from Landlord, and Landlord desires to sublease to Tenant, the Premises and (ii) Tenant desires to lease from Landlord, and Landlord desires to lease to Tenant, the Improvements and Personal Property (as hereinafter defined), all upon the terms and subject to the conditions and provisions hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Landlord and Tenant hereby agree as follows:

1. Demise; Use; Security Interest. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises, the Improvements and the Personal Property for the term and rental and upon the other terms and conditions as hereinafter set forth, to be used and occupied by Tenant solely for the use and purpose set forth in the Prime Lease and for no other use or purpose. Tenant accepts the Premises, the Improvements and the Personal Property subject to, and Landlord agrees to assign and Tenant hereby agrees to assume and perform all obligations of Tenant under, all existing subleases, concession and service contracts in effect as of the Commencement Date of this Lease. For and in consideration of Landlord's agreement to enter into this Lease and in order to secure Tenant's obligations hereunder, Tenant hereby

grants to Landlord a security interest in Tenant's interest in all hereafter acquired items of Personal Property. Tenant agrees to do, execute, acknowledge and deliver all such further acts, conveyances, security agreements, financing statements and assurances as Landlord may reasonably require for assuring, conveying, assigning and confirming unto Landlord the security interest granted hereby. The term "Personal Property" means all fixtures, furniture, furnishings, fittings, equipment, machinery, apparatus, signage, appliances, draperies, carpeting and other articles of personal property owned by Landlord now located on the Premises and used or useable in connection with any part of the Premises or the Improvements (other than any such personal property which is owned by any subtenant, licensor or concessionaire of Tenant at the Premises), including, without limitation, practice golf balls, rental golf clubs and related equipment and which are listed on Exhibit B hereto and any such personal property which may hereafter be acquired by Tenant and used, installed or placed on the Premises by Tenant pursuant to the terms of this Lease.

2. **Term.** The term (the "Term") of this Lease shall commence (the "Commencement Date") on the date hereof and, unless sooner terminated pursuant to the provisions hereof, shall terminate on the earlier of (i) the date which is ten (10) years after the date hereof and (ii) the date of the termination of the term of the Prime Lease. As used herein, the phrase "Term Year" shall mean the twelve calendar month period commencing on the Commencement Date (provided, however, if the Commencement Date is not the first day of a calendar month, the first Term Year shall be deemed to commence on the first day of the calendar month during which the Commencement Date occurs) and each anniversary thereof, except that the last Term Year may not be twelve calendar months and shall terminate on the last day of the term of this Lease.

As set forth in Section 4.1 of the Prime Lease, the use permit issued by the City of Moreno Valley for the golf training and recreation Center described in Section 1.11 of the Prime Lease expires on September 1, 2003, unless extended. Tenant, at its sole cost and expense, shall commence the process of securing an extension of said use permit no later than one hundred eighty (180) days prior to the expiration of such use permit and shall use its best efforts to obtain such use permit extension for a period ending subsequent to the expiration of the Term of this Lease (and, if possible, subsequent to the expiration of the Option Terms of this Lease), and shall provide Landlord with ample notice and opportunity to participate in any negotiations and/or discussions with the City and/or other governmental entities with respect to such extension. Tenant shall copy Landlord with any and all correspondence, notices or hearings and the like as necessary to permit Landlord's full participation in such process. In addition, Landlord shall have the right, at its sole option (but shall not be obligated) to take any and all action reasonably required to secure such use permit extension. In the event that notwithstanding Tenant's diligent efforts, Tenant (or Landlord, if Landlord has elected to participate) is unable to obtain an extension of the use permit from the City of Moreno Valley for the golf training and the recreation center beyond September 1, 2003 for a period expiring not earlier than the expiration date of the Term of this Lease, then Tenant and Landlord shall each have the right to cancel this Lease upon not less than thirty (30) days' prior written notice (but in no event later than September 1, 2003) in which case the Lease shall be then cancelled and of no further force or effect).

3. **Option to Extend.**

(a) **Option Terms.** Provided that Tenant is not in default of any provision of this Lease at the time of exercise or at any time thereafter prior to the commencement of any "Option Term" (as defined below), Tenant may extend the Term for two (2) additional periods of five (5) years each (each such period being referred to herein as an "Option Term" and collectively as the "Option Terms") only by giving Landlord written notice not more than eighteen (18) months nor less than twelve (12) months before the expiration of the Term or Option Term, as applicable. All of the terms and conditions of this Lease, except this right to extend the Term, shall apply to the Option Terms so far as applicable, and reference in this Section 3 and elsewhere in this Lease to the "Term" shall be deemed to include, as applicable, the Option Terms. Failure of Tenant to exercise the initial option to extend the Term shall nullify the remaining option to extend.

(b) **Confirming Memorandum.** Upon the commencement of each Option Term, Landlord and Tenant shall execute, acknowledge and deliver an amendment to this Lease acknowledging the fact that the option has been exercised and confirming the commencing and expiration dates of the Option Term. In the event that Tenant shall fail to give Landlord notice of exercise of any option to extend granted herein as provided above, the remaining option to extend shall be terminated and Tenant shall join with Landlord in executing and acknowledging an instrument of termination in form suitable for recording in the public records of the county within which the Premises is located, to be effective upon the expiration date of the Term or Option Term, as applicable.

(c) **Nontransferable Option.** The options to extend the Term granted herein are granted solely to Tenant and are not assignable or transferable, whether separate from or incident to an assignment or other transfer of Tenant's interest under this Lease; provided, however, that notwithstanding the foregoing Tenant shall have the right to assign such options to any "Affiliate" (as defined in the Prime Lease) of Tenant, successor or purchaser of Tenant by merger or consolidation or purchaser of substantially all of Tenant's assets, provided such affiliate, successor or purchaser assumes all of Tenant's obligations under this Lease by written instrument in a form reasonably acceptable to Landlord on or before such assignment and Tenant delivers written notice of the same to Landlord and otherwise complies with the provisions of Article 14 of the Prime Lease. Except to the extent an assignment or transfer of such option is specifically permitted pursuant to the provisions of the foregoing sentence, any attempt to assign or transfer such option shall cause the option to automatically cease and terminate and, in such event, this Lease shall terminate upon the expiration of the Term.

(d) **Terms and Conditions.** The terms and conditions set forth in this Lease, including the Base Annual Rental and Percentage Rental specified in Sections 5 and 6 hereof, shall continue in full force and effect during each and every Option Term exercised pursuant to this Section 3.

4. **Termination Right.** Tenant shall have the right to terminate this Lease effective at any time within the sixth (6th) Term Year upon not less than one hundred eighty (180) days prior written notice to Landlord, whereupon this Lease shall terminate on the date specified in such notice of termination but in no event less than one hundred eighty (180) days after the date of such notice (provided such termination occurs on or before the expiration of the sixth (6th) Term Year).

5. **Base Annual Rental.**

(a) Tenant shall pay to Landlord base annual rental (hereinafter called "Base Annual Rental") for the Premises as follows:

<b><u>Time Period</u></b>	<b><u>Base Annual Rental</u></b>	<b><u>Monthly Installments</u></b>
Term Years 1-5	\$115,000.00	\$9,583.33
Term Years 6-10	\$133,317.00	\$11,109.75
First Option Term (Term Years 11-15)	\$154,551.00	\$12,879.25
Second Option Term (Term Years 16-20)	\$179,168.00	\$14,930.67

Base Annual Rental shall be due and payable in twelve (12) equal monthly installments. Each such installment shall be due and payable in advance on or before the first day of each calendar month of the term hereof. If the term of this Lease commences on a day other than the first day of a month or ends on a day other than the last day of a month, Base Annual Rental for such month shall be prorated on the basis of one-thirtieth (1/30th) of the monthly installment of the Base Annual Rental for each day of the partial month; prorated Base Annual Rental for any such partial first month of the term hereof shall be paid in advance on the date on which the term commences.

(b) All Base Annual Rental, Percentage Rental and Additional Rent shall be paid without setoff or deduction whatsoever and shall be paid to Landlord at its office at % Highlander Golf Corp., One Galleria Tower, 13355 Noel Road LB3, Suite 1315, Dallas, Texas 75240-6603, Attention: Patrick H. Edgerton or Fritz L. Duda or at such other place as Landlord may designate by notice to Tenant.

6. **Percentage Rental.** Tenant shall pay to Landlord Percentage Rental in the amounts and at the times set forth in, and in accordance with the terms of, Section 7.4 of the

Prime Lease and shall otherwise comply with all terms of the Prime Lease relating to Percentage Rental and the reporting requirements therefor. For purposes of calculating Percentage Rental, the Minimum Annual Rental (as defined in the Prime Lease) shall be used and not Base Annual Rental (as defined in this Lease).

7. **Additional Rent: Payments: Interest.**

(a) Except for "Minimum Annual Rental" and the "Concession Rental" (as such terms are defined in the Prime Lease and for the payment of which Tenant shall have no obligation under this Lease), Tenant shall also pay to Landlord all other amounts payable by Landlord under the Prime Lease which are attributable to the Premises, the Improvements or the Personal Property or attributable to Tenant, its agents, employees, customers or invitees. By way of example and not by way of limitation, costs incurred by Prime Landlord or Landlord in repairing damage to the Improvements caused by an employee of Tenant and amounts expended or incurred by Prime Landlord or Landlord on account of any default by Tenant which gives rise to a default under the Prime Lease would be amounts payable by Tenant pursuant to this Subsection 7(a).

(b) Each amount due pursuant to Subsection 7(a) above and each other amount payable by Tenant hereunder, unless a date for payment of such amount is provided for elsewhere in this Lease, shall be due and payable on the fifth (5th) day following the date on which Prime Landlord or Landlord has given notice to Tenant of the amount thereof, but in no event later than the date on which any such amount is due and payable under the Prime Lease.

(c) All amounts other than Base Annual Rental and Percentage Rental payable to Landlord under this Lease shall be deemed to be Additional Rent due under this Lease. All past due installments of Base Annual Rental and Percentage Rental, and Additional Rent shall bear interest from the date due until paid at the rate per annum specified in Section 26.14 of the Prime Lease.

(d) Tenant shall pay Prime Landlord on the due dates for services requested by Tenant which are billed by Prime Landlord directly to Tenant rather than Landlord.

8. **Condition of Premises, Improvements and Personal Property.** Tenant's taking possession of the Premises, the Improvements and the Personal Property shall be conclusive evidence as against Tenant that the Premises, the Improvements and the Personal Property were in good order and satisfactory condition when Tenant took possession. No promise of Landlord to alter, remodel or improve the Premises, the Improvements or the Personal Property and no representation respecting the condition of the Premises, or the Improvements have been made by Landlord to Tenant. Tenant agrees to accept the Premises, Improvements and Personal Property in its "AS-IS" condition as of the date hereof and throughout the Term. Without limiting the foregoing, Tenant's rights in the Premises, the Improvements and the Personal Property are subject to all municipal, county and state laws, ordinances and regulations governing and regulating the use and occupancy of the Premises, the Improvement and the



Personal Property and subject to all matters now or hereafter of record. Tenant acknowledges that, except as expressly set forth in this Lease, neither Landlord nor Landlord's agent has made any representation or warranty as to (i) the present or future suitability of the Premises, the Improvements or the Personal Property for the conduct of Tenant's business; (ii) the physical or environmental condition of the Project, the Premises, the Improvements or the Personal Property; (iii) the expenses of operation of the Premises, the Improvements or the Personal Property; (iv) the safety of the Project, the Premises, the Improvements or the Personal Property, or any part thereof, whether for use of Tenant or any other person, including Tenant's employees, agents, invitees or customers; or (v) any other matter or thing affecting or related to the Premises, the Improvements, the Personal Property or the Project. Tenant acknowledges that no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth herein. Tenant has, prior to the delivery of possession of the Premises, the Improvements and the Personal Property, inspected the Premises, the Improvements and the Personal Property and become thoroughly acquainted with their condition. Upon the expiration of the Term hereof, or upon any earlier termination of the Term hereof or of Tenant's right to possession, Tenant shall surrender the Premises, the Improvements and the Personal Property in at least as good condition as at the date hereof, ordinary wear and tear excepted. Tenant acknowledges that it has no right to remove any Improvements or Personal Property upon the expiration of the Term hereof, or upon any earlier termination of the Term hereof. Accordingly, Section 26.17 of the Prime Lease is no longer applicable, and Tenant shall have no rights or benefits thereunder.

9. **Hazardous Materials.** Tenant shall at all times in all respects comply with all federal, state and local laws, ordinances and regulations ("Hazardous Materials Laws") relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any "Hazardous Materials" (as hereinafter defined). Tenant shall (a) not cause or permit any Hazardous Materials to be brought upon, kept or used in or about the Premises or the Improvements by Tenant, its agents, employees, contractors or invitees, without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion; provided, however, that Landlord's prior written consent shall not be required with respect to the use by Tenant or its employees, licensees, subtenants or contractors of cleaning solvents, gasoline (stored in above ground tanks only and provided such tanks meet current industry standards) and other materials which are customarily utilized in the operation and maintenance of the Premises and the Improvements in accordance with the uses permitted herein subject to compliance by Tenant with all other provisions of this Section 9 and provided such use is in compliance with all Hazardous Materials Laws. Without limiting the foregoing, if the presence of any Hazardous Material on or about the Premises the Improvements caused or permitted by Tenant results in any contamination of the Premises, the Improvements, any adjacent portion of the Project and/or adjacent property, Tenant shall promptly take all actions at its sole cost and expense as are necessary to return the Premises, the Improvements any adjacent portion of the Project and/or any such adjacent property to the condition existing prior to the introduction of any such Hazardous Material to the Premises, the Improvements, such adjacent portion of the Project and/or any such adjacent property; provided that Landlord's approval of such action shall first be obtained in writing. As used herein, the term "Hazardous Material" means any asbestos, petroleum product or by-

product of hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. Upon the expiration of the Term or any earlier termination of this Lease, Tenant shall immediately surrender possession of the Premises, the Improvements and the Personal Property to Landlord in full compliance with all Hazardous Materials Laws. If Tenant's business operations on the Premises involved any generation, storage, use, treatment or disposal of any Hazardous Materials, Tenant shall be responsible for removing any such Hazardous Materials from the Premises and the Improvements and for decontaminating the Premises, the Improvements, any adjacent portion of the Project and/or any adjacent property affected by such Hazardous Material in strict accordance with all applicable Hazardous Materials Laws.

10. **Termination of License Agreement.** Landlord and Tenant acknowledge and agree that concurrently with the execution hereof, (a)(i) that certain License Agreement dated June 1, 1994 between Landlord and Tenant, and (ii) that certain Golden Bear Golf Center Development Agreement dated June 1, 1994 between Landlord and Tenant have been terminated (pursuant to separate termination agreements) and are of no further force or effect and (b) Tenant has refunded to Landlord any unapplied portion of the development fee paid by Landlord to Tenant pursuant to the terms of said Golden Bear Golf Center Development Agreement.

11. **The Prime Lease.**

(a) This Lease and all rights of Tenant hereunder and with respect to the Premises and the Improvements are subject to the terms, conditions and provisions of the Prime Lease which such terms, conditions and provisions are incorporated herein by reference as if fully set forth herein. Tenant hereby assumes and agrees to perform faithfully and be bound by, with respect to the Premises and the Improvements, all of Landlord's obligations, covenants, agreements and liabilities under the Prime Lease as the tenant thereunder and all terms, conditions, provisions and restrictions contained in the Prime Lease except:

- (i) for the payment of "Minimum Annual Rental" (as that term is defined in the Prime Lease);
- (ii) that Tenant shall not have any obligations to construct or install Improvements as provided in Article 6 of the Prime Lease or any other provision in such Prime Lease, except as may be provided herein; and
- (iii) that the following provisions of the Prime Lease do not apply to this Lease: any provisions in the Prime Lease allowing or purporting to allow Landlord any rent concessions or abatements or construction allowances.

(b) Without limitation of the foregoing:

- (i) Tenant shall not make any changes, alterations or additions in or to the Premises or the Improvements except as otherwise expressly provided herein;
- (ii) If Tenant desires to take any other action and the Prime Lease would require that Landlord obtain the consent of Prime Landlord before undertaking any action of the same kind, Tenant shall not undertake the same without the prior written consent of Landlord. Landlord may condition its consent on the consent of Prime Landlord being obtained and may require Tenant to contact Prime Landlord directly for such consent;
- (iii) All rights given to Prime Landlord and its agents and representatives by the Prime Lease to enter the Premises and the Improvements shall inure to the benefit of Landlord and their respective agents and representatives with respect to the Premises and the Improvements;
- (iv) Landlord shall also have all other rights, and all privileges, options, reservations and remedies, granted or allowed to, or held by, Prime Landlord under the Prime Lease;
- (v) Tenant shall maintain insurance of the kinds and in the amounts required to be maintained by Landlord under the Prime Lease. All policies of insurance shall name as additional insureds the Prime Landlord and Landlord and their respective officers, directors or partners, as the case may be, and the respective agents and employees of each of them; and
- (vi) Tenant acknowledges that it is bound by the terms of Section 3.3 of the Prime Lease. In addition, Tenant agrees not to take or cause any other party to take any action in opposition of, or otherwise make any objection before or to any agency or governmental authority with respect to, any of the actions of the Prime Landlord described in Section 3.3 and any of the procedures or processes described therein. Further, Tenant agrees that Tenant shall not take or cause any other party to take any action in opposition of, or otherwise make any objection before or to any agency or governmental authority with respect to, any change in the zoning or permitted uses under applicable zoning laws with respect to the Premises or any property adjacent to the Premises. Tenant acknowledges and agrees

that Prime Landlord and Landlord only shall have such right to object to or oppose any such changes or procedures.

- (vii) Tenant acknowledges and agrees that the terms of Article 12 of the Prime Lease shall be deemed to apply to the Personal Property as well as to all other property, fixtures and equipment described in said Article 12.
- (viii) Tenant shall not do anything or suffer or permit anything to be done which could result in a default under the Prime Lease or permit the Prime Lease to be cancelled or terminated.

(c) Notwithstanding anything contained in this Lease (except as specifically set forth in this Subsection 11(c)) or in the Prime Lease which may appear to be to the contrary, Landlord and Tenant hereby agree as follows:

- (i) Tenant shall not assign, mortgage, pledge, hypothecate or otherwise transfer or permit the transfer of this Lease or any interest of Tenant in this Lease, by operation of law or otherwise, or permit the use of the Premises, the Improvements or any part thereof by any persons other than Tenant and Tenant's employees, or sublet the Premises, the Improvements or any part thereof, except in accordance with the terms and conditions of Article 14 of the Prime Lease, provided that any Assignment (as defined in Article 14 of the Prime Lease) requiring Landlord's consent pursuant to said Article 14 may be given or withheld by Landlord in its sole and absolute discretion. Landlord and Tenant agree that Section 14.1(b) of the Prime Lease is hereby deemed deleted for purposes of this Lease;
- (ii) neither rental nor other payments hereunder shall abate by reason of any damage to or destruction of the Premises, the Improvements or any part thereof, unless, and then only to the extent that, rental and such other payments actually abate under the Prime Lease with respect to the Premises on account of such event;
- (iii) Tenant shall not have any right to any portion of the proceeds of any award for a condemnation or other taking, or a conveyance in lieu thereof, of all or any portion of the Improvements or the Premises;

- (iv) Tenant shall not have any right to exercise or have Landlord exercise any option under the Prime Lease, including, without limitation, any option to extend the term of the Prime Lease; provided, however, that if Tenant exercises its options to extend the Term of this Lease in accordance with Section 3 hereof, Landlord agrees to exercise its options to extend the term of the Prime Lease so that the term of the Prime Lease extends beyond the expiration date of this Lease; and
- (v) In the event of any conflict between the terms, conditions and provisions of the Prime Lease and of this Lease, the terms, conditions and provisions of this Lease shall, in all instances, govern and control.

(d) It is expressly understood and agreed that Landlord does not assume and shall not have any of the obligations or liabilities of Prime Landlord under the Prime Lease and that Landlord is not making the representations or warranties, if any, made by Prime Landlord in the Prime Lease. With respect to work, services, repairs and restoration or the performance of other obligations required of Prime Landlord under the Prime Lease, if any, Landlord's sole obligation with respect thereto shall be to request the same, upon written request from Tenant, and to use reasonable efforts to obtain the same from Prime Landlord. Landlord shall not be liable in damages, nor shall rent abate hereunder, for or on account of any failure by Prime Landlord to perform the obligations and duties imposed on it under the Prime Lease.

(e) Tenant acknowledges and agrees that Landlord owns the Improvements and the Personal Property (except after acquired Personal Property owned by Tenant) and that Tenant shall have no interest whatsoever in the Improvements or the Personal Property other than the leasehold interest granted by this Lease.

(f) For purposes of this Lease, Landlord and Tenant agree that Section 9.1(b)(i) of the Prime Lease is hereby deemed deleted and that Landlord and Tenant agree as follow with respect to the payment of Taxes (as defined Section 91.(a) of the Prime Lease:

(i) Prorations. Landlord and Tenant acknowledge that the Premises is not a distinct and independent tax parcel, but is taxed with other unimproved property owned by Prime Landlord ("Prime Landlord's Adjacent Parcel") as part of a larger tax parcel (herein the "Tax Parcel"). Accordingly, Landlord and Tenant agree that Prime Landlord and Tenant shall be responsible for "Prime Landlord's pro rata share" and "Tenant's pro rata share", respectively, of Taxes affecting the Tax Parcel, as such terms are defined in Subsection 11(f)(ii) below. Payment of Taxes will be made in accordance with Subsection 11(f)(iii) below.

(iv) Tenant shall not have any right to exercise or have Landlord exercise any option under the Prime Lease, including, without limitation, any option to extend the term of the Prime Lease; provided, however, that if Tenant exercises its options to extend the Term of this Lease in accordance with Section 3 hereof, Landlord agrees to exercise its options to extend the term of the Prime Lease so that the term of the Prime Lease extends beyond the expiration date of this Lease; and

(v) In the event of any conflict between the terms, conditions and provisions of the Prime Lease and of this Lease, the terms, conditions and provisions of this Lease shall, in all instances, govern and control.

(d) It is expressly understood and agreed that Landlord does not assume and shall not have any of the obligations or liabilities of Prime Landlord under the Prime Lease and that Landlord is not making the representations or warranties, if any, made by Prime Landlord in the Prime Lease. With respect to work, services, repairs and restoration or the performance of other obligations required of Prime Landlord under the Prime Lease, if any, Landlord's sole obligation with respect thereto shall be to request the same, upon written request from Tenant, and to use reasonable efforts to obtain the same from Prime Landlord. Landlord shall not be liable in damages, nor shall rent abate hereunder, for or on account of any failure by Prime Landlord to perform the obligations and duties imposed on it under the Prime Lease.

(e) Tenant acknowledges and agrees that Landlord owns the Improvements and the Personal Property (except after acquired Personal Property owned by Tenant) and that Tenant shall have no interest whatsoever in the Improvements or the Personal Property other than the leasehold interest granted by this Lease.

(f) For purposes of this Lease, Landlord and Tenant agree that Section 9.1(b)(i) of the Prime Lease is hereby deemed deleted and that Landlord and Tenant agree as follow with respect to the payment of Taxes (as defined Section 91.(a) of the Prime Lease:

(i) **Prorations.** Landlord and Tenant acknowledge that the Premises is not a distinct and independent tax parcel, but is taxed with other unimproved property owned by Prime Landlord ("Prime Landlord's Adjacent Parcel") as part of a larger tax parcel (herein the "Tax Parcel"). Accordingly, Landlord and Tenant agree that Prime Landlord and Tenant shall be responsible for "Prime Landlord's pro rata share" and "Tenant's pro rata share", respectively, of Taxes affecting the Tax Parcel, as such terms are defined in Subsection 11(f)(ii) below. Payment of Taxes will be made in accordance with Subsection 11(f)(iii) below.

(ii) **Pro rata Share.** "Prime Landlord's pro rata share" of Taxes affecting the Tax Parcel in any year will be determined as follows: That portion of the current Taxes attributable to the Tax Parcel as unimproved land, multiplied by a fraction, the numerator of which is the land area of the portion of Prime Landlord's Adjacent Parcel included as part of the Tax Parcel and the denominator of which is the land area of the Tax Parcel. "Tenant's pro rata share" of Taxes affecting the Tax Parcel will be determined as follows: (A) That portion of the current Taxes attributable to the Tax Parcel as unimproved land, multiplied by a fraction, the numerator of which is the land area of the Premises and the denominator of which is the land area of the Tax Parcel plus (B) one hundred percent (100%) of the current Taxes attributable to any improvements on the Tax Parcel.

(iii) **Payment.** Tenant shall pay Landlord simultaneously with each monthly payment of Base Annual Rental an amount equal to one-twelfth (1/12th) of Landlord's reasonable estimate of Tenant's pro rata share for the current year's Taxes. Landlord may use such funds to pay Taxes for the Premises. In the event the funds received by Landlord are insufficient to pay Tenant's pro rata share of Taxes as the same become due and payable, Tenant shall pay Landlord the amount necessary to fund such deficiency within five (5) days after notice from Landlord.

(g) For purposes of this Lease, Landlord and Tenant agree that Section 11.9 of the Prime Lease is hereby amended by (i) deleting each appearance of "One Hundred Eighty (180)" and substituting "Thirty (30)" and (ii) deleting "thirty (30)" and substituting "ten (10)".

(h) Nothing contained in this Lease shall be construed to create privity of estate or contract between Tenant and Prime Landlord, except the agreements of Tenant in Sections 15 and 16 hereof in favor of Prime Landlord, and then only to the extent of the same.

12. **Default by Tenant.**

(a) Upon the happening of any of the following (and notwithstanding any contrary provision in the Prime Lease which is hereby superseded):

- (i) Tenant fails to pay any Base Annual Rental when due and such failure continues for five (5) days after notice thereof from Landlord to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedures or any similar or superseding statute;

- (ii) Tenant fails to pay any other amount due from Tenant hereunder, including, without limitation, Percentage Rental, and such failure continues for five (5) days after written notice thereof from Landlord to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedures or any similar or superseding statute;
- (iii) Tenant fails to perform or observe any other covenant or agreement set forth in this Lease and such failure continues for thirty (30) days after notice thereof from Landlord to Tenant; provided, however, that if such default can not reasonably be cured in such thirty (30) day period and provided that Tenant has commenced and is diligently and in good faith attempting to cure the same within such thirty (30) day period, Tenant shall have an additional reasonable period of time to effect such cure provided that Tenant diligently and continuously prosecutes such cure to completion, but in no event longer than any grace and/or cure period provided under the Prime Lease; in addition, any such notice shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedures or any similar or superseding statute; or
- (iv) any other event occurs which involves Tenant or the Premises or the Improvements and which would constitute a default under the Prime Lease if it involved Landlord or the Premises or the Improvements.

Tenant shall be deemed to be in default hereunder, and Landlord may exercise, without limitation of any other rights and remedies available to it hereunder or at law or in equity, any and all rights and remedies of Prime Landlord set forth in the Prime Lease in the event of a default by Landlord thereunder.

(b) In the event Tenant fails or refuses to make any payment or perform any covenant or agreement to be performed hereunder by Tenant, Landlord, after three (3) business days' prior notice (except that no notice shall be required in the case of an emergency or danger to persons or property) may make such payment or undertake to perform such covenant or agreement (but shall not have any obligation to Tenant to do so). In such event, amounts so paid and amounts expended in undertaking such performance, together with all costs, expenses and attorneys' fees incurred by Landlord in connection therewith, shall be Additional Rent hereunder.



13. **Nonwaiver.** Failure of Landlord to declare any default or delay in taking any action in connection therewith shall not waive such default. No receipt of moneys by Landlord from Tenant after the termination in any way of the term or of Tenant's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the term or affect any notice given to Tenant or any suit commenced or judgment entered prior to receipt of such moneys.

14. **Cumulative Rights and Remedies.** All rights and remedies of Landlord under this Lease shall be cumulative and none shall exclude any other rights or remedies allowed by law.

15. **Waiver of Claims and Indemnity.**

(a) Tenant hereby releases and waives any and all claims against Prime Landlord and Landlord and each of their respective officers, directors, partners, agents and employees for injury or damage to person, property or business sustained in or about the Improvements or the Premises by Tenant, except in any case which would render this release and waiver void under law.

(b) Except for Prime Landlord's or Landlord's willful misconduct or gross negligence, Tenant agrees to indemnify, defend and hold harmless Prime Landlord and Landlord and each of their respective officers, directors, partners, agents and employees, from and against any and all claims, demands, costs and expenses of every kind and nature, including attorneys' fees and litigation expenses, arising from Tenant's use and occupancy of the Premises and the Improvements, Tenant's construction of any leasehold improvements in the Premises or from any breach or default on the part of Tenant in the performance of any agreement or covenant of Tenant to be performed under this Lease or pursuant to the terms of this Lease, or from any act, omission or neglect of Tenant or its agents, officers, employees, guests, servants, invitees or customers in or about the Premises or the Improvements. In case any such proceeding is brought against any of said indemnified parties, Tenant covenants, if requested by Landlord, to defend such proceeding at its sole cost and expense by legal counsel reasonably satisfactory to Landlord.

16. **Waiver of Subrogation.** Anything in this Lease to the contrary notwithstanding, Landlord and Tenant each hereby waive any and all rights of recovery, claims, actions or causes of action against the other and the officers, directors, partners, agents and employees of each of them, and Tenant hereby waives any and all rights of recovery, claims, actions or causes of action against Prime Landlord and its agents and employees for any loss or damage that may occur to the Premises or the Improvements or any improvements by Tenant thereto, or any personal property of any person therein or in the Improvements, by reason of fire, the elements or any other cause insured against under valid and collectible fire and extended coverage insurance policies, regardless of cause or origin, including negligence, except in any case which would render this waiver void under law, to the extent that such loss or damage is actually recovered under said insurance policies. Each of the parties hereto, on behalf of their respective insurance companies insuring the property of either Landlord or Tenant against any such loss,

waives any right of subrogation that it may have against the other to the extent of any recovery under such insurance, to the extent such waiver does not invalidate such policy of insurance. Each waiver shall be expressly included in, and shall comply with the requirements of, the respective insurance policies. Should either or both of the respective insurance companies assess a charge for such waiver, each party shall pay only for the charge assessed by its respective insurer.

17. **Brokerage Commissions.** Each party hereby represents and warrants to the other that it has had no dealings with any real estate broker or agent in connection with this Lease, and that it knows of no other real estate broker or agent who is or might be entitled to a commission in connection with this Lease. Each party agrees to protect, defend, indemnify and hold the other harmless from and against any and all claims inconsistent with the foregoing representations and warranties for any brokerage, finder's or similar fee or commission in connection with this Lease, if such claims are based on or relate to any act of the indemnifying party which is contrary to the foregoing representations and warranties.

18. **Successors and Assigns.** This Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and shall be binding upon and inure to the benefit of the successors of Tenant and, to the extent any such assignment may be approved, Tenant's assigns. Without limiting the foregoing, the provisions of Subsections 11(b)(vi) and 11(h) and Sections 15 and 16 hereof shall inure to the benefit of the successors and assigns of Landlord.

19. **Entire Agreement.** This Lease (including all the terms and provisions of the Prime Lease incorporated herein by reference) contains all the terms, covenants, conditions and agreements between Landlord and Tenant relating in any manner to the rental, use and occupancy of the Premises and the Improvements. No prior agreement or understanding pertaining to the same shall be valid or of any force or effect. The terms, covenants and conditions of this Lease cannot be altered, changed, modified or added to except by a written instrument signed by Landlord and Tenant.

20. **Notices.**

(a) In the event any notice from Prime Landlord or otherwise relating to the Prime Lease is delivered to the Premises or is otherwise received by Tenant, Tenant shall, as soon thereafter as possible, but in any event within twenty-four (24) hours, deliver such notice to Landlord if such notice is written or advise Landlord thereof by telephone if such notice is oral.

(b) Notices and demands required or permitted to be given by either party to the other with respect hereto or to the Premises or the Improvements shall be in writing and shall not be effective for any purpose unless the same shall be served either by personal delivery with a receipt requested, by overnight air courier service or by United States certified or registered mail, return receipt requested, postage prepaid; provided,

however, that all notices of default shall be served either by personal delivery with a receipt requested or by overnight air courier service, addressed as follows:

if to Landlord: Highlander Towngate, Ltd.  
One Galleria Tower  
13355 Noel Road LB3, Suite 1315  
Dallas, Texas 75240-6603  
Attention: Patrick H. Edgerton  
Fritz L. Duda

with a copy to: Rudnick & Wolfe  
203 North LaSalle Street  
Suite 1800  
Chicago, Illinois 60601  
Attention: Bruce D. Loring

if to Tenant: Golden Bear Golf Centers, Inc.  
11780 U.S. Highway #1  
North Palm Beach, Florida 33408  
Attention: Mr. Gary Rosmarin

with a copy to: Fleming, Haile & Shaw, P.A.  
Park Centre, Suite 100  
440 Royal Palm Way  
Palm Beach, Florida 33480  
Attention: David M. Shaw

Notices and demands shall be deemed to have been given two (2) days after mailing, if mailed, or, if made by personal delivery or by overnight air courier service, then upon such delivery. Either party may change its address for receipt of notices by giving notice to the other party.

21. **Authority of Tenant.** Tenant represents and warrants to Landlord that this Lease has been duly authorized, executed and delivered by and on behalf of Tenant and constitutes the valid, enforceable and binding agreement of Tenant.

22. **Authority of Landlord.** Landlord represents and warrants to Tenant that this Lease has been duly authorized, executed and delivered by and on behalf of Landlord and constitutes the valid, enforceable and binding agreement of Landlord.

23. **Consent of Prime Landlord.** The obligations of Landlord and Tenant under this Lease are conditioned and contingent upon the Prime Landlord consenting hereto by executing and delivering the Consent attached to this Lease.

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24. **Examination.** Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for the Premises or the Improvements or in any manner bind Landlord, and no lease or obligation on Landlord shall arise until this instrument is signed and delivered by Landlord and Tenant and the consent of Prime Landlord is obtained as described in Section 23 above.

25. **Quiet Enjoyment.** Landlord covenants that Tenant, upon paying all Base Annual Rental, Percentage Rental and all other amounts due hereunder and performing all covenants and agreements on its part to be performed, shall have quiet enjoyment and possession of the Premises during the Term, subject to the terms and conditions of this Lease and the Prime Lease and to any agreements to which this Lease is or may become subordinate.

26. **Counterparts.** This Lease may be executed in one or more counterparts, each of which shall be deemed an original instrument.

27. **Exculpation.** Tenant acknowledges and agrees that the liability of Landlord under this Lease shall be limited to its interest in the Premises and any judgments rendered against Landlord shall be satisfied solely out of the proceeds of sale of its interest in the Premises which have been received by Landlord. No personal judgment shall lie against Landlord or upon extinguishment of its rights in the Premises and any judgments so rendered shall not give rise to any right of execution or levy against Landlord's assets. The provisions hereof shall inure to Landlord's successors and assigns. The foregoing provisions are not designed to relieve Landlord from the performance of any of Landlord's obligations under this Lease, but only to limit the personal liability of Landlord in case of recovery of a judgment against Landlord. The foregoing shall not be deemed to limit Tenant's rights to obtain injunctive relief or specific performance.

IN WITNESS WHEREOF, Sublandlord and Subtenant have executed this Sublease as of the date aforesaid.

**LANDLORD:**

**HIGHLANDER TOWNGATE, LTD.,**  
a Texas limited partnership

By: **HIGHLANDER GOLF**  
**CORPORATION, a Texas**  
corporation, its general partner

By:   
Its: \_\_\_\_\_

**TENANT:**

**GOLDEN BEAR GOLF CENTERS,**  
**INC., a Florida corporation**

By: \_\_\_\_\_

Its: \_\_\_\_\_

IN WITNESS WHEREOF, Sublandlord and Subtenant have executed this Sublease as of the date aforesaid.

**LANDLORD:**


**HIGHLANDER TOWNGATE, LTD.,**  
a Texas limited partnership

By: **HIGHLANDER GOLF**  
**CORPORATION, a Texas**  
corporation, its general partner

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**TENANT:**

**GOLDEN BEAR GOLF CENTERS,**  
**INC., a Florida corporation**

By:  \_\_\_\_\_  
Its: President

### **CONSENT OF PRIME LANDLORD**

Prime Landlord hereby consents to the entering into the Lease by Tenant and Landlord and consent to the terms and provisions thereof, and the Lease shall not be deemed to impose any additional obligations on Prime Landlord or otherwise affect any rights of Prime Landlord under the Prime Lease. Prime Landlord's execution of this Consent shall not operate as a waiver of any prohibition against further assignment or subletting without Prime Landlord's consent.

Prime Landlord, as landlord under the Prime Lease, hereby represents, warrants and certifies to Tenant that the following statements are true, correct and complete as of the date hereof:

(a) **Prime Lease.** Prime Landlord is the landlord under the Prime Lease. There have been no amendments, modifications or revisions to the Prime Lease, and there are no agreements of any kind between Prime Landlord and Landlord regarding the Premises, except as provided in the Prime Lease.

(b) **Term.** The initial term of the Prime Lease, prior to being amended by the First Amendment, commenced on April 1, 1994, and will expire on June 30, 2004, exclusive of unexercised renewal options and extension options contained in the Prime Lease.

(c) **Prime Landlord's Authority.** The Prime Lease has been duly authorized and executed by Prime Landlord and is in full force and effect. A true, correct and complete copy of the Prime Lease is attached hereto as Exhibit A.

(d) **Rent.** Landlord began paying rent on June 17, 1994. Landlord is obligated to pay fixed or base rent under the Prime Lease in the annual amount set forth in the Prime Lease. No rent under the Prime Lease has been paid more than one month in advance, and no other sums have been deposited with Prime Landlord. No Percentage Rent for the last lease year ending December 31, 1995 became due. Annual rental and all other sums due Prime Landlord pursuant to the Prime Lease have been paid in full through the date hereof.

(e) **Notices.** Prime Landlord has received no written notice from any governmental authority respecting a condemnation or threatened condemnation of all or a portion of the Premises.

(f) **Default.** Neither Prime Landlord nor, to Prime Landlord's actual knowledge, Landlord is in default under the Prime Lease, and no event has occurred which, with the giving of notice or passage of time, or both, could result in such a default.

(g) **Assignment.** Prime Landlord has no actual notice of any assignment, hypothecation or pledge of Landlord's interest under the Prime Lease.

IN WITNESS WHEREOF, Prime Landlord has executed this Consent as of the 13<sup>th</sup> day of ~~August~~, 1996.  
September

**PRIME LANDLORD:**

**HOUSING RESOURCES COMPANY,  
L.C., a Nevada limited liability company**

By: **FRITZ DUDA COMPANY, a Texas  
corporation, its managing agent**

By:   
Its: Fritz L. Duda



**EXHIBIT A**

**PRIME LEASE**

HIGHLANDER - TOWNGATE  
PROPERTY AND EQUIPMENT  
BUILDING AND OFFICE  
AS OF 8/6/96

## ITEM

1. Desk
2. 2 - Swivel Chairs
3. Credenza
4. Computer Table
5. FAX Sharp F0620
6. 2 - 486 Personal Computers
7. 2 - Bocamodem-14.4 kbps v. 32 bis
8. Printer Deskjet 660 Cse
9. 5 - Keyboards
10. Screen-Color ctx Model 1451C
11. 3 - Telephones
12. Ricoh Copier FT4085
13. Ricoh Base
- 14. File Cabinet
15. Key Safe
16. Combination Safe
17. 3 - Bulletin Boards
18. 5 - Nicklaus Photos
19. 6 - Staff Photos
20. 3 - Picture Frames
21. 3 - Photo Sign Stands
22. VCR-Samsung 4 Head
23. TV Model #ct27sf10r
24. Drafting Chair
25. 10 - Lounge Chairs
26. 3 - POS Computer-Acros 486sx/25 (IBS)
27. 3 - 9" POS Screens-wen jko 936
28. 5 - POS Keyboards
29. POS-Tape Storage
30. 2 - POS Receipt Printer-star sp-300
31. POS Printer okidata microline 320
32. Laminator pertech asi #77350
33. 4 - Storage Closets (portable)
34. Shelving for F + B
35. Drinking Fountain halsey taylor wall mount
36. 1 - Fire Extinguisher
37. 3 - TV Cameras Elmo #1 (966198) #2 (966193) #3 Pelco (Nema type 3r) API

38. 2 - TV Screen-monitors Elmo 1302n
39. 1 - Sanyo video recorder srt-500
40. 1 - video sequential switcher vs 5004
41. Range Buckets-71 Warm Up (Witteck)
42. Range Buckets-80 Regular
43. Range Buckets-77 Big Bear
44. Range Buckets-16 Golden Bear
45. 19,000 Range Balls-Top Flite Super Range
46. 1 - Time Clock
47. box of time cards w/ rack
48. Coffee Cabinet
49. Electric Pencil Sharpener
50. 2-Hole Punch
51. 3-Hole Punch
52. 3 - Plastic Sign Holders
53. 7 - N/F School Pictures
54. 2 - N/F Signs
55. 5 - Appointment books
56. 6 - Hand Tools
57. Two Ton Floor Jack
58. Bicycle Pump
59. 3 - Walkie Talkies-Motorola sp 50
60. 3 - Chargers & Batteries
61. 100 - Loaner Golf Clubs
62. 7 - Jr. Loaner sets w/ bags
63. Rubber Mats in Restrooms
64. 2 - Soap Dispensers
65. 2 - Trash Receptacles
66. 2 - Video Cameras-Panasonic 4500
67. 2 - Tripods
68. Batteries & Cords
69. Entry Door Mat

#### GARAGE AND SHED

70. Ball Washer Range Rustler
71. 5 - Ball Tubs
72. 2 - 5 Gallon Igloos
73. 2 - 5 Gallon Gas Cans
74. Spreader (Greensmiths)
75. Mop/Bucket/Squeezer
76. Mower-Reel Tru-Cut 7 blade 5hp
77. Mower-Rotary Murry 21" 3.75hp
78. Welder-Miller model #M-225

- 79. Shop Vacuum
- 80. Carpet Vacuum
- 81. 2 - Hand Picker (Witteck)
- 82. 2 - Fire Extinguishers
- 83. 19 - putting green flags
- 84. Hand Held Sprayer
- 85. Umbrella Bases-Concrete
- 86. Misc. Supplies

#### RANGE AND OUTDOORS

- 87. 2 - Vinyl Tables
- 88. 31 - Stacking Chairs
- 89. 30 - bag stands (Witteck)
- 90. 6 - Trash Baskets
- 91. 3 - 32 Gallon Trash Cans
- 92. 65 - Hitting Mats (Tower Tee)
- 93. 65 - Mat Frames
- 94. 1 - Shade Canopy (Sun Cover)
- 95. Misting System
- 96. 5 - Yardage/Rules Signs
- 97. 10 - Flag Poles (Witteck)
- 98. 8 - Flags (Witteck)
- 99. 4 - Concrete Tables (Quick Crete)
- 100. 8 - Concrete Benches
- 101. Sandwich Sign
- 102. GB Golf Shop Sign-for Lumpy's
- 103. Mule 1000 (Kawasaki)
- 104. Ball Picker and Baskets (Range Rustler)
- 105. Turf Broom (Krammer)
- 106. Club Cleaner (Witteck)
- 107. 20 - Rods and Ropes
- 108. Bag Rack and Spike Cleaners
- 109. 6 - Ash Trays
- 110. 6 - Umbrellas and Covers
- 111. "Irons Only" Sign
- 112. "Yellow Basket" Sign

#### BATTING CAGES/SHED

- 113. ABC Equipment-500 Baseballs and 250 Softballs
- 114. Metal Bear Sign
- 115. Monument Sign-Corner

- 116. "Batting Instruction" Banner
- 117. 14 - Green/Yellow Pennants
- 118. 31- Bats (De beer/Worth)
- 119. 12 - Helmets (ABC)
- 120. Token Machine
- 121. Crescent Wrench
- 122. 750 - Tokens
- 123. T-Ball Net and Frame
- 124. 2 - Pitchers Mound Rubbers
- 125. 2 - Home Plate Rubber
- 126. 2 - Bleachers
- 127. Sun Screen
- 128. Ryobi blower/vac
- 129. Ryobi weed eater
- 130. Bloomfield coffee maker
- 131. Novell software

P&amp;E-B&amp;O